IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

National Insurance Company Limited

Vs

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Arvind Kumar & others

S.B.CIVIL MISC. APPEAL NO.1028/2004

Against the award dated 28.02.2004 made by the Motor Accidents Claims Tribunal, Bikaner in Claim Case No.71/2000.

Date of Judgment : 04.10.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Jagdish Vyas for the appellant

Mr. H.S. Shrimali) for the respondents
Ms. Usha Tanwar)

BY THE COURT:

This appeal by the insurer of the vehicle involved in the accident has been preferred against the award dated 28.02.2004 made by the Motor Accidents Claims Tribunal, Bikaner in Claim Case No.71/2000 whereby the Tribunal has awarded compensation in the sum of Rs.1,84,000/- to the claimant-respondent Arvind Kumar for the loss suffered by

him due to the injuries sustained in the accident. The Tribunal has also awarded interest on the award amount at the rate of 9% per annum from the date of filing of claim application i.e. 29.03.2000. While making such award, the Tribunal has directed the non-applicants to deposit the award amount within two months with the stipulation that in default, interest shall be payable at the rate of 12% per annum from the date of filing of claim application.

This appeal was taken up for consideration on 28.07.2004. It appears that on behalf of the appellant, submission was made for exoneration on account of violation of policy condition for the driver of the vehicle not holding a valid driving licence. However, this Court noticed from the impugned award that the appellant-insurer itself had virtually given up the point of validity of licence and, therefore, no merit was found in this appeal on the said point. However, another submission was made on behalf of the appellant that so far stipulation regarding higher rate of interest in default was concerned, such liability could not have been fastened on the insurer. This Court, therefore, issued notice for final disposal on this limited point. The order dated 28.07.2004 reads thus:

> "The appellant has challenged the award dated 28-02-2004. Learned counsel for the appellant submits that the Tribunal without deciding about the validity of the licence of the driver of three wheeler vehicle, decided the suit against the appellant Insurance company. According to learned counsel for the appellant, whether driver had a valid driving licence or not is a question of fact and should have been decided by the Tribunal. The Tribunal without deciding this fact could not have applied the principle laid down by the Hon'ble Apex Court in the case of Swarn Singh and, therefore, award of the Tribunal against the appellant is legally not sustainable.
>
> I perused the reasons given in the award. It appears that, in fact the appellant Insurance Company itself virtually did not press the point of validity of the licence in the light of the judgment of Swarn Singh's case, which is clear from the reason given in the award dated 28-2-2004. Therefore, I do not find any merit in the appeal on this point.
>
> Learned counsel for the appellant submits that so far as payment of interest on higher rate in default is concerned, this liability cannot be fastened upon the appellant Insurance Company.
>
> Issue notice for final disposal on this limited point.
>
> Issue notice of stay petition also."

However, the appeal was taken up for consideration again after service of the notice on 20.02.2006 and was ordered to be admitted and while issuing notice on the stay application, it was ordered that if 50% of the award amount be

paid by the insurer, then operation of the rest of the award shall remain stayed. The order dated 20.02.2006 reads thus:

> "Heard.
>
> Admit. Issue notice.
>
> Issue notice of stay application also. Meanwhile, if 50% of the award is paid by the Insurance company, the operation of the rest of the award shall remain stayed."

After service of the notice, the matter has now been placed for orders on stay application. However, after going through the record, learned counsel for the appellant candidly submitted that notice for final disposal was issued in this case only on the limited point regarding liability in relation to the penal interest and by the force of the order dated 28.07.2004, this appeal could be considered only on this limited point.

At the request and with the consent of learned counsel for the parties, the matter has been heard finally on the limited point on which notice was issued in this appeal on 28.07.2004.

Learned counsel Mr.Jagdish Vyas appearing for the appellant has referred to the decision of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Keshav Bahadur & others: (2004) 2 SCC 370 and submitted that once the

Tribunal has exercised its discretion of awarding interest on the award amount from the date of filing of claim application at the rate of 9% per annum in paragraph 9 of the impugned award, there was no occasion for the Tribunal to put a stipulation that in default of payment within two months, interest shall be payable at the rate of 12% per annum.

In the aforesaid case of Keshav Bahadur, the Hon'ble Supreme Court has specifically considered and ruled against the validity of such stipulation of higher rate of interest in case of default thus:

> "Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed."

In view of the decision of the Hon'ble Supreme Court directly on the point, learned counsel for the respondents has rightly not attempted to justify such a baseless stipulation made by the Tribunal in its award. Such stipulation being squarely contrary to law cannot be upheld and deserves to be

set aside. No other point being involved in appeal, the appeal deserves to succeed to the limited aspect of setting aside of the stipulation regarding penal interest.

In the result, this appeal succeeds and is partly allowed to the extent indicated above. The stipulation made in paragraph-10 of the impugned award of penal interest at the rate of 12% per annum in case of not depositing of the award amount within two months stands annulled. Rest of the award is affirmed. No costs.

(DINESH MAHESHWARI),J.

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